IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

CRL.A.No. 895 of 2003(C)

AGAINST THE ORDER IN CRLP.36/2003 Dated 29/05/2003
CC.65/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I,
TRIVANDRUM

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APPELLANT: COMPLAINANT:

BOBY GOMEZ,
T.C.13/397 (1) KUNNUKUZHI, THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY
SMT.K.R.RIJA

RESPONDENTS: ACCUSED AND STATE:

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1. TREESA ANTONY,
T.C.31/167, R.V. BUNGLOW, SIVADASAN ROAD,
I.T.I. JUNCTION, CHAKAI, THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

R2- BY P.P..SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. THANKAPPAN, J.

Crl.A.No. 895 OF 2003-C

Dated this the 11th day of December, 2006.

J U D G M E N T

Appellant is the complainant in C.C.No.65/2002 on the file of the Judicial Magistrate of First Class-I, Thiruvananthapuram. As per the complaint filed by the appellant, the 1st respondent issued a cheque in favour of the appellant for an amount of Rs. Two lakhs and when the same was presented for encashment, it was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. On complying with the statutory requirements regarding notice etc, a complaint filed before the court below. The complaint was taken on file by the trial court and issued summons to the 1st respondent and the case was posted for evidence on 17th March, 2003. On 17th March, 2003 when the case was called for hearing, the trial Magistrate found that the complainant/appellant was not present either in person or by pleader. Accordingly, the 1st respondent was acquitted under Section 256(1) of the Cr.P.C.

2. The learned counsel appearing for the appellant submits that the acquittal ordered by the court below under Section 256(1) is not sustainable in law. Further he submits that on the day of the posting of the case the absence of the appellant, i.e on 17.3.2003, is not due to any willful laches or negligence of the appellant, whereas it is happened only because of the wrong noting of the date of the posting of the case as 27.3.2003 in stead of 17.3.2003. Though the appellant had not produced the court records along with the Appeal Memorandum, a reading of the order would show that the learned trial Magistrate had not considered the principles laid down by this Court in the judgments reported in **Don Bosco v. Partech Computers Ltd,** (2005(2) KLT 1003)and **G.F.S Chit & Loans (P) Ltd. v. Rajesh** (2006 (3) KLT 825).

3. In **Don Bosco's** case (cited supra) this Court had categorically held that "the court did not apply its judicial discretion to reach a conclusion whether the personal attendance of the complainant was essential on that day for the progress of the case or not. When the presence of the complainant was quite unnecessary and the magistrate could

proceed with the case by adjourning the same even if there was no representation from the counsel, the Magistrate should have adjourned the case". A reading of the order in hand would not show that the presence of the appellant was necessary on the date of the posting of the case. Further, as per the principles laid down in **G.F.S Chit** (cited supra) it is stated that "the courts shall also bear in mind that unmerited, thoughtless disposal gives a wrong signal to the society, stacking even public confidence in the system of administration of justice. It is wise to remember as well that unwarranted haste can curdle unexpected errors." That apart, a reading of the order in hand would indicate that the learned trial Magistrate had not made up his mind while passing order but only filled up a printed form kept in the court to acquit the accused under Section 256(1) of the Cr.P.C.

In the above circumstances and in the light of the principles laid down by this Court, the judgment under appeal is set aside and the court below is directed to take back the case on file and shall dispose of the same as per law.

The court below shall issue fresh notice to the 1st respondent by invoking the provisions of Cr.P.C. The appellant shall appear before the court below on 05.02.2007. The Registry shall forward the court records forthwith.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.895 OF 2003-C

JUDGMENT

11th December, 2006.